



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Forensic Science
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 40-50-10 et. Seq.
<b>Regulation title</b>	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
<b>Action title</b>	Promulgation of new regulation
<b>Date this document prepared</b>	November 13, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

Emergency regulations were filed in June of 2006 and are now being proposed as permanent regulations. There are no substantive changes from the emergency regulations that are currently in place.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

During its 2006 Session, the General Assembly amended Virginia Code §19.2-188.1 to require the Department to approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of §18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. The amendment to §19.2-188.1 further specifies that the Department shall approve those marijuana field tests deemed accurate and reliable pursuant to regulations adopted in accordance with the Administrative Process Act (§2.2-440 et. seq.).

Pursuant to Virginia Code §9.1-1110, the Forensic Science Board shall adopt regulations for any provisions of the Code as they relate to the responsibilities of the Department. At its November 8, 2006 meeting, the Forensic Science Board approved these proposed regulations.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

By amending Code 19.2-188.1 to allow law enforcement officers to testify to the results of marijuana field tests, the General Assembly determined that such an action would assist officers as they strive to protect the health, safety and welfare of Virginia's citizens.

The proposed regulations are necessary to fulfill the General Assembly's mandate. These regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the Department.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

This proposed regulatory action is designed to ensure continuity from the Emergency Regulations in compliance with 19.2-188.1, to these proposed regulations. Effective in July of 2006, Virginia Code 19.2-188.1(B) was amended to permit law enforcement officers to testify at trial for simple possession of marijuana cases to the results of a field test regarding whether or

not any plant material, the identity of which is at issue, is marijuana. In accordance with 19.2-188.1(B), officers may only testify to the results of kits deemed accurate and reliable by the Department pursuant to regulations adopted in accordance with the Administrative Process Act. These regulations establish permanently the process the Department will follow for approving kits and describe where law enforcement agencies can find the list of approved kits. Without these regulations, there would be no permanent approved marijuana field tests for use by law enforcement.

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

---

There are no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

---

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

---

There is no particularly affected locality.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

---

The department is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The department is also seeking information on impacts on small businesses as defined in 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by submitting them to Michele Gowdy by mail at the Department of Forensic Science, 700 N. 5<sup>th</sup> Street, Richmond, VA 23219, by email to Michele.Gowdy@dfs.virginia.gov, or by fax at (804) 786-6857. For questions, Ms. Gowdy may be reached by phone at (804) 786-6848. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and, once available, notice of the meeting date can be found in the Calendar of Events section of the Virginia Register of Regulations as well as on the Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	As these regulations have already been promulgated as emergency regulations, the cost will be minimal. Any manufacturer who requests approval of their kit pays a fee of \$50.00 to cover the costs. The Department may elect to purchase kits at a cost of \$0.875 - \$2.00 per kit.
<b>Projected cost of the regulation on localities</b>	There will only be a cost should an agency elect to purchase their own kits.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Law enforcement agencies and the Department of Forensic Science may be affected by the regulation.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	All law enforcement agencies in Virginia will be offered the opportunity to request kits at no charge from the Department and/or order their own approved kits. The number of kits distributed is based upon the number of similar convictions from years prior.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the</b>	Any cost would be minimal. A kit could cost anywhere from \$0.875 to \$2.00 should an agency elect not to order kits from DFS or exceed their kit

**projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.**

allowance.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no viable alternatives to these regulations.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations have been in place as Emergency Regulations since July 2006 and are consistent with objectives that promote the health, safety, environmental and economic welfare of the Commonwealth.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response

There has been no public comment.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage*

*economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

---

There is no family impact.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

---

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6 VAC 40-50-10			Added an apostrophe between the "r" and "s" in "manufacturers" contained in the definition "Manufacturers instructions and claims"
6 VAC 40-50-30		120 days	90 days – recommendation by DPB to lessen the time for approval of marijuana field tests